TEXAS DEPARTMENT OF TRANSPORTATION

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TEA 21 Reauthorization Update

Senate & House Look to Conference; White House Blocking Higher Spending Levels

The Transportation Equity Act for the 21st Century (TEA 21) authorization of federal-aid highways, transit, highway safety, transportation research, and motor carrier safety programs expired on September 30, 2003. Since then, these programs have continued under a series of short-term extensions of TEA 21 program authority. The second extension expired on April 30, 2004. With no resolution of the TEA 21 reauthorization legislation yet completed, Congress must act to provide additional continuing authority for the federal surface transportation programs beyond that date. Congress passed another two-month TEA 21 extension on April 29, providing program authorization and funding through June 30, 2004.

The reason these extensions are necessary is that Congress has not yet enacted a full, six-year reauthorization bill to succeed TEA 21. They have been working on it, though. The current status is that both the House and Senate have passed separate six-year TEA 21 reauthorization bills by overwhelming majority votes in both houses. The next step is to bring the House and Senate bills together to create a single, final reauthorization proposal to send to President Bush for signature.

But that's not going to be as easy as it may appear. First, the Bush Administration has its own ideas about what the TEA 21 reauthorization should be. The Bush Administration's proposal, called the Safe, Accountable, Flexible, and Efficient Transportation Equity Act (SAFETEA), would essentially maintain the TEA 21 program structure and authority and provide $256 billion in overall funding for FY 2004 through FY 2009. A key feature of the Bush SAFETEA proposal is to liberalize the project review process, requiring earlier involvement of stakeholders in the project development process to achieve the end result of faster, more thorough, and more cost-effective project delivery. These modifications have the strong support of the states and localities but are also under scrutiny by some of the very stakeholders affected by the provisions. Another key aspect of the Bush SAFETEA proposal is its relatively small price tag. Compared to the House and Senate bills now on the table, the Bush SAFETEA bill provides only modest increases in federal funding for the nation's surface transportation programs over the current funding levels in TEA 21. This is the bill's biggest challenge, but President Bush has insisted that the final TEA 21 reauthorization bill stay as close to his proposal's $256 billion funding level as possible. He has even issued two veto threats against the House and Senate versions to back up his position. Ongoing negotiations between the White House and Congressional leaders indicate that Bush's veto threat is being taken seriously.

The Senate version of TEA 21 reauthorization is also called SAFETEA. The Senate took up the Bush Administration's proposal and modified it to reflect Senate priorities. The resulting bill

(S 1072) eliminated some of the more flexible financing provisions of the Bush Administration's version, added new language on transportation planning and project review, and created more set-asides (thereby limiting state flexibility within the core programs). SAFETEA also would create a handful of new programs. In addition, the Senate version of SAFETEA significantly increased the funding level to $318 billion overall. The White House responded with a threat to veto the measure.

The House version of TEA 21 reauthorization is called TEA LU, Transportation Equity Act – A Legacy for Users, and was filed as HR 3550. As originally filed, HR 3550 would have provided $375 billion in federal funding over six years. To reach this high funding level, the proponents of the bill suggested a 12-cent increase in the federal motor fuels tax, a proposal that was strongly opposed by the Bush Administration and congressional leaders. Forced to cut back the bill, the House Transportation and Infrastructure Committee marked up HR 3550 at an overall funding level of $275 billion. The amended version of TEA LU may have a smaller purse, but it's not a smaller bill. TEA LU builds on TEA 21 by adding several new targeted programs, most of which serve a particular constituency. TEA LU's new programs include a separate Safe Routes to Schools program, motor vehicle congestion relief program, mandatory ITS set-asides, and others. In addition, HR 3550 contains what's called a "reopener clause," which would cut off federal highway program funds to the states at the end of FY 2005 if Congress did not enact new legislation to raise the Minimum Guarantee to 95% by FY 2009 and increase all states' highway funding above inflation. This provision would require another funding increase above the $275 billion level in the underlying bill and essentially transforms the legislation into a two-year bill. Finally, HR 3550 contains billions of dollars in earmarked High Priority Projects and another $6.6 billion in yet-to-be-designated Projects of Regional and National Significance. Even at the lower overall funding level, HR 3550 also solicited a veto threat from the White House, again on the grounds that the spending level was too high.

This sets the stage for the next step in the TEA 21 reauthorization process – the conference committee between the two houses of Congress to reach a compromise on a final bill. These negotiations will be shaped by three main influences: the president's desire for a smaller overall funding level, the battle among the states on highway funding equity, and efforts to make policy changes that will result in more efficient transportation project delivery while still honoring environmental considerations.

Conference Issues

Overall Funding Level – It appears that the Congressional leadership will be fully engaged in this TEA 21 reauthorization effort as it moves to conference. With the presidential and congressional election before us, the desire of Republican leaders in Congress and the White House to show unity is a major factor in all legislation on the agenda this year. Look for congressional leaders to develop a consensus on the overall size of the TEA 21 reauthorization bill this spring or defer the debate until after the election. The current target is between $256 billion (Bush Administration's bill) and $318 billion (Senate version of SAFETEA), but will likely focus on the lower end of that funding range.

Highway Funding Equity – The Bush Administration's version of SAFETEA actually represents a slight improvement in the highway funding equity for the states compared to current law. This is because the Bush Administration proposes to eliminate some of the highway discretionary programs that are currently authorized in law but not subject to the Minimum Guarantee calculation. This alone would improve the scope (% of funding covered by the Minimum Guarantee) and therefore increase each state's minimum guaranteed rate of return on its contributions to the Highway Trust Fund, even while maintaining the current 90.5% Minimum Guarantee size.

The Senate version of SAFETEA (S 1072) abandons the Minimum Guarantee mechanism in favor of something called an Equity Bonus. The Equity Bonus would hold harmless at their TEA 21 percentages all low population, low population density, and low income states. All other states would be guaranteed at least a 90.5% rate of return and a 10% increase in highway program funding compared to TEA 21. Once these minimums are figured, all states are promised to receive at least a 95% rate of return under the Equity Bonus by FY 2009. However, the Equity Bonus uses annual growth caps to control the size of the overall Equity Bonus program. The result is that the high growth states (Texas, California, Colorado, Arizona, Florida, and Maryland) are held at a 90.5% rate of return each year until FY 2009, when their rate of return springs up to 95% (the growth cap is lifted that year alone). Not all states are treated equally in the Senate's Equity Bonus, but it does eventually get every state to a 95% rate of return by FY 2009.

TEA LU (HR 3550) would maintain the 90.5% Minimum Guarantee provisions of current law. However, TEA LU adds many new programs and does not place those program funds under the scope of the TEA LU Minimum Guarantee calculation. The result is an overall reduction in the amount of highway program funds subject to the Minimum Guarantee. This means that TEA LU represents a significant step backwards for all states in terms of highway funding equity. The authors of the bill hope to appease donor states by including the "reopener clause" and tying future funding to improving the Minimum Guarantee size to 95% by FY 2009.

Flexible Federal Policies for Project Delivery – A significant concern of the states in this TEA 21 reauthorization debate has been whether the new law would provide greater flexibility for delivering needed transportation projects faster and more efficiently while still meeting all federal requirements. At the same time, as the potential for significant increases in program funding seems to shrink, many states want to ensure that the resulting programs allow states to do as much as possible with the limited funding available to them. This means that more flexible federal financial and policy tools are needed to give states greater options for providing transportation solutions to growing congestion and access challenges. States and localities have sought more flexible policies on tolling, innovative financing, project review, and project delivery. There seem to be significant differences of opinion among the congressional transportation leaders about these issues. How they are resolved in the final bill will be a key factor in determining whether the resulting legislation will prove beneficial to states and their transportation systems.

Texas Priorities in Conference

Improving Texas' Highway Funding Rate of Return - House version is far worse than current law. TEA LU formula is a retrenchment from existing TEA-21 Minimum Guarantee program. The TEA LU 90.5% Minimum Guarantee only covers 80-84% of the total highway money distributed to the states. As passed, TEA LU provides Texas a 78% ROR. Senate bill has a better structure. SAFETEA's Equity Bonus formula promises every state a 95% ROR by

FY 2009. However, it holds the high growth states (including Texas) at a 90.5% rate of return every year through FY 2008 using a growth cap. As passed, SAFETEA provides Texas an 81% ROR on average.

What Texas Wants in the Final Bill: The best possible compromise would be to apply the House's Minimum Guarantee mechanism to the scope of the Senate's Equity Bonus program coverage, working toward a 95% ROR for ALL states by FY 2009. This means including all project earmark categories and all core formula programs under the Minimum Guarantee and increasing it to 95% by FY 2009.

Design-Build Procurement - State procurement practices allow TxDOT to engage a single contractor to conduct the environmental review, design, and project construction portions of a transportation project. Federal transportation practices still favor separate environmental review, design, and construction contracts. The federal process adds unnecessary delay to project development, leading to extra costs and reduced efficiencies. Federal law needs to mirror the state process. Neither bill provides the full authority that Texas seeks to allow Texas-style design-build procurement for federal-aid projects.

What Texas Wants in the Final Bill: Insert the design-build procurement language proposed in H.R. 2864, the RAPID Act. At the very least, Texas must be designated as one of the pilot state in Section 1513 of the Senate version, but that only deals with environmental review authority. We'd rather have that pilot program extended to all of the Secretary's authority as originally proposed by the Bush Administration. If necessary, insert language to establish a Texas demonstration project during the term of the reauthorization bill to allow Texas to use its own procurement process for design-build contracts and to perform design and environmental work concurrently to advance the project development and delivery process.

Tolling Interstate Improvements - With new Texas tolling authorities getting underway, the federal limitation on tolling a key part of the transportation system is hampering the state's ability to effectively address congestion.

What Texas Wants in the Final Bill: Replace the current language in both bills with the unlimited federal-aid highway tolling authority language included in the RAPID Act. This language would be a beneficial option for all states. Between the two bills, Texas prefers the language in Section 1609 of SAFETEA, which has fewer limitations.

Concurrent Environmental Review for Multimodal Transportation Projects - To open important multimodal transportation facilities faster and to encourage innovative private sector involvement, the state needs authority to use a concurrent approach to environmental review and project construction. As TxDOT begins construction on one segment of the corridor environmental and design work on other segments of the corridor should be allowed to commence.

What Texas Wants in the Final Bill: Insert the concurrent environmental review and construction for multimodal transportation projects included in the RAPID Act. This option would benefit all states. If necessary, insert language to establish a Texas demonstration project during the term of the reauthorization bill to allow Texas to simultaneously 1) design and construct a project segment that has received environmental approval and 2) conduct the environmental assessment or analysis of an adjoining project segment.

***Pro Rata* Toll Credit Calculation and Uses** - Toll credits can be used to reduce the non-federal share of a federally-funded project, thereby granting the state greater flexibility in its financing options for needed infrastructure improvements and transit projects. The calculation of toll credits needs to be amended to allow credit for the portion of a toll financed project funded with federal dollars. Right now a state receives no toll credits if any federal money whatsoever is in a project. Neither bill currently addresses this issue.

What Texas Wants in the Final Bill: Insert language to modify the calculation of federal toll credits. Add either statutory language or conference report language reaffirming that toll credits may be used as the non-federal match. If necessary, insert language allowing only Texas to receive credit for non-federal toll expenditures on a pro rata basis.

Private Activity Bonds for Highways and Freight Facilities - The purpose of the Private Bonds for Modern Roads Act (HR 3857 by Congressman Sam Johnson) is to encourage private participation in surface transportation infrastructure projects by expanding the types of projects eligible for exempt facility bonds to include highway facilities and freight transfer facilities.

What Texas Wants in the Final Bill*:* The Senate has an acceptable version. Missouri Senator Jim Talent successfully amended SAFETEA on the Senate floor to include a private activity bonds provision (Sec. 5691 of the bill). Insert the text of HR 3857 or ensure that the Talent amendment language is retained.

Borders and Corridors Program Improvements - Bring the borders and corridors program back to its original purpose, separate into two programs, and give priority consideration to corridors in which traffic has increased since the date of enactment of the North American Free Trade Agreement implementation. Senate focuses on border operations technology. Sec. 1810 of SAFETEA establishes the Border, Planning, Operations, Technology, and Capacity program to distribute $1.013 billion over six years to the states along the U.S.-Mexico and U.S.- Canada border by a formula based on cargo weight, cargo value, commercial vehicle crossings, and passenger vehicle crossings into the United States. The Senate version directs more money to Texas than the House border program formula would. For the corridor program, the House focuses on improving existing Interstates and NAFTA corridors. Sec. 1301 of TEA LU establishes a National Corridor Infrastructure Improvement Program to authorize the Secretary to allocate $3.333 billion over six years to states for corridors that are or will become part of the Interstate System or projects that will be completed within five years.

What Texas Wants in the Final Bill: The SAFETEA border program formula will more equitably distribute funding to Texas. The TEA LU corridor program would direct more funds to international trade corridors and existing Interstate system. Texas would prefer that eligible corridors be limited to those experiencing increased NAFTA trade traffic and that connect to ports of entry at the U.S.-Mexico and U.S.-Canada borders.

Surface Transportation System Performance Pilot Program - USDOT proposed a new highway pilot program under which states could manage their Interstate Maintenance, National Highway System, Surface Transportation, Highway Safety Improvement, Bridge, and Minimum Guarantee program funds as a block grant. To help us streamline project delivery, Texas should be one of those pilot program states, with the broader authority provided in the USDOT proposal.

What Texas Wants in the Final Bill: Insert the language from the USDOT's SAFETEA proposed Sec. 1801 Surface Transportation System Performance Pilot Program into the final conference product. Put in language to designate Texas as a pilot program state, giving

Texas authority to act as the Secretary in all federal matters related to its federal-aid highway program.

Federal Reimbursement for ROW Options - The Texas Legislature in passing HB 3588 voted to give TxDOT the authority to offer and pay "options" to property owners for potential acquisition of property for transportation corridors. Federal law needs to be amended to allow for federal reimbursement of options that are exercised when acquiring land for a final alignment. Federal law currently does not appear to include ROW acquisition options or other advanced ROW acquisition methods as eligible expenditures for federal reimbursement. The Senate bill addresses some loosely related items, but that may provide the room to insert Texas language. Sec. 1521 of SAFETEA allows states to use federal funds to acquire real property deemed critical for transportation development; development on such property cannot occur until the project receives environmental clearance; such property acquisition is deemed exempt under Clean Air Act Amendments.

What Texas Wants in the Final Bill: Modify Sec. 1521 of the Senate version to allow states to use federal funds to pay an option to purchase property that the state ultimately incorporates into an eligible surface transportation project.

Texas Highway and Transit Formula Funding

Proposal	Highways	Rate of Return	Transit
TEA 21	$12.6 billion	86%	$1.1 billion
SAFETEA (USDOT)	$14.03 billion	82%	$1.65 billion
SAFETEA (Senate)	$18.2 billion	81%	$1.9 billion
TEA LU (House)	$14.4 billion	78%	$1.8 billion

The ***Federal Flyer*** is a publication of the TxDOT Legislative Affairs Office. It is intended to provide up-to-date information on major legislative activities in the 108th Congress for the management of the Texas Department of Transportation, state leaders, and others interested in Texas transportation issues. This report will also feature key activities in the national transportation community. Sources include news services and staff reports.

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Texas Department of Transportation